sisted in using combustible timber and in the location and condition of electric wires within the building. The building caught fire and the servant ran out to give the alarm. Failing in this and for the purpose of using the telephone, he ran back into the building, which was in flames, where he was so severely burned as to cause death. Suit is brought against the company for damages. *Held*, that the proximate cause of servant's injury was the voluntary and reckless act of going into the burning building. *Chattanooga Light & Power Co.* v. *Hodges* (1902), —Tenn. —, 70 S. W. Rep. 616.

The discussion in this case presents the view generally taken by the courts on this subject. It is well settled that where one person is exposed to peril of life by negligence of another, the latter will be liable in damages for injuries received by a third party in a reasonable effort to rescue the one so imperiled. But whether the benefit of the rule is to be extended to one injured in an effort to save another's property the courts are not agreed. Found cited against the extension are: *Eckert* v. *Railway*, 43 N. Y. 502, 3 Am. Rep. 721; *Morris* v. *Railway*, 148 N. Y. 186, 42 N. E. 579; *Condiff* v. *Railway*, 45 Kans. 260, 25 Pac. 562; *Cook* v. *Johnson*, 58 Mich. 437, 25 N. W. 388, 55 Am. Rep. 703; *Seale* v. *Railway*, 65 Texas 274, 57 Am. Rep. 602. In favor of it: *Berg* v. *Railway*, 70 Minn. 272, 73 N. W. 648, 68 Am. St. Rep. 524; *Liming* v. *Railway*, 81 Iowa 246, 47 N. W. 66; *Pullman Pal. Car Co.* v. *Laack*, 143 Ill. 242, 32 N. E. 285, 18 L. R. A. 215; *Wasmer* v. *Railway*, 80 N. Y. 212, 36 Am. Rep. 608. The courts are agreed that the injured party must not act rashly nor unnecessarily expose himself to danger in any case. A comparison of the cases respecting the saving of property shows there is no real conflict. The difference lies, not in the nature of the thing to be rescued, but in the degree of prudence that the courts require the party to exercise in thus hazarding his life.

NEGLIGENCE—INJURY TO EMPLOYEE—LIABILITY OF EMPLOYER.—Plaintiff's foot was caught in an unblocked guard rail, while he was attempting to uncouple cars, and he was injured. He alleges negligence on part of the company in its failure to block the guard rails. *Held*, he cannot recover. *O'Neill* v. *Chicago, R. I. and P. R. Co.* (1903),—Neb. —, 92 N. W. Rep. 731.

Ordinary diligence in providing its employees with safe machinery is all that is required of the employer, and the test of the character of appliances is general use. *R. R. Co.* v. *Lyde*, 57 Tex. 505; *Conway* v. *R. R.*, 50 Iowa 465; *Iron Ship Building Works* v. *Nuttall*, 119 Pa. St., 149, 13 Atl. 65; *Allison Manuf'g Co.* v. *McCormick*, 118 Pa. St. 519. The safety of the construction of appliances, for a particular business, where skill is required, is not ordinarily a question for the jury. Juries cannot be allowed to set up a standard, that will dictate the custom or control of business. BAILEY'S MASTER'S LIABILITY FOR INJURIES TO THE SERVANT, pp. 23-24; *Titus* v. *R. R.*, 136 Pa. State 618, 20 Atl. 517; *Loffin* v. *R. R.*, 106 N. Y. 136, 12 N. E. 599; *Vinton* v. *Schwab*, 32 Vt. 612; *Tuttle* v. *R. R.*, 122 U. S. 189. It is much safer to hold that when it appears the employee is aware of the risks to which he exposes himself in the service, and consents to encounter them by entering the service, his employment subject to these risks cannot be treated as a breach of duty. *McGinnis* v. *Bridge Co.*, 49 Mich. 466; *R. R.* v. *McCormick*, 74 Ind. 440; *R. R.* v. *Selly*, 152 U. S. 145; *Appel* v. *R. R.*, 111 N. Y. 550; *R. R.* v. *McDade*, 135 U. S. 554.

NEGLIGENCE—LIABILITY OF STATE FAIR ASSOCIATION FOR NEGLIGENCE OF PERSONS CONDUCTING A SIDE-SHOW ON THE FAIR GROUNDS.—The defendant, the Texas State Fair, owned extensive grounds upon which it annually conducted a state fair. It leased or conceded to the firm of S. & L.

the exclusive right to use a portion of the grounds for the purpose of an exhibition of fireworks. It was agreed that S. & L. should furnish all ticket-sellers, etc.; that the Fair association should furnish the ticket-takers, and that the proceeds should be divided at the close of each night's entertainment, in the ratio of one-fourth to the Fair association and the residue to S. & L. At the time of making the contract, there was a considerable number of seats on the ground erected by the Fair association, and it was agreed that S. & L. should have the use of these seats. These proving inadequate, S. & L. erected others. The Fair association extensively advertised this exhibition and invited the public to attend it. During one of these exhibitions, one of the seats erected by S. & L. fell, owing to defective building, and the plaintiff who had bought a ticket and was in attendance, was severely injured. Before the accident one of the officers of the Fair association assured the tax collector that the exhibition of S. & L. was part of the fair and covered by the license issued to the Fair association. After the accident, the tax collector was notified by officers of the Fair association that S. & L. were independent of the Fair association and that their exhibition was not covered by the license of the fair. In an action by plaintiff against the Fair association, *Held*, that the Fair association was liable for the injury. *Texas State Fair* v. *Marti* (1902), — Tex. Civ. App. —, 69 S. W. Rep. 432.

In a similar action, growing out of the same facts, brought by another plaintiff in the Federal courts, *Held*, that the Fair association was liable for the injury. *Texas State Fair* v. *Brittain* (1902), — C. C. A. —, 118 Fed. Rep. 713.

The courts in both cases proceeded upon the theory that the Fair association by permitting the exhibition to be held upon its grounds, advertising it to the public, inviting the public to attend, and sharing in the conduct and proceeds of it, was in the attitude of one who invites others to come upon his premises and is charged with the duty to exercise ordinary care and prudence to render the premises reasonably safe. COOLEY ON TORTS (2d ed.) 718. "No matter by whom the seats were erected," said the court in the first case, "it was the duty of the plaintiff in error [the Fair association] to see that the same were in a reasonably safe condition before inviting the public to occupy them," citing *Richmond, etc., Railway Co.* v. *Moore*, 94 Va. 493, 27 S. E. 70, 37 L. R. A. 258; *Conradt* v. *Clauve*, 93 Ind. 478, 47 Am. Rep. 388; *Sebeck* v. *Volkfest Verein*, 64 N. J. L. 624, 46 Atl. 631, 50 L. R. A. 199, 81 Am. St. Rep. 512.

PARTNERSHIP—ILLEGAL TRANSACTION—ACCOUNTING.—S, D, and R, were severally engaged or interested in carrying on lotteries in Cincinnati, Ohio, contrary to law. S sued R alleging that, at the instance of R, it had been arranged that each should monthly put into the hands of R a sum of money to be used by R in procuring immunity from interference or prosecution on the part of the state and municipal authorities; that for a period of seven years S had paid to R the stipulated sum for the purpose aforesaid until such payments had amounted to the sum of $16,075; that R, instead of applying the money to the use contemplated, had wrongfully appropriated it to his own use; wherefor S sought to recover from R the amounts so paid. On demurrer, *Held*, that the transaction was illegal and the courts would give no relief. *Smith* v. *Richmond* (1902), — Ky. —, 70 S. W. Rep. 846.

The plaintiff contended that the arrangement made R the agent of S, and that, under the well settled rule, the agent could not defeat a recovery by the principal by setting up the illegality of the transaction in which he received the money; citing *Martin* v. *Richardson*, 94 Ky. 183, 21 S. W. 1039, 19 L. R. A. 692, 42 Am. St. Rep. 353. The court, however, held that the transaction